



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 19, 1996

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0979

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39889.

The City of Houston (the "city") received a request for information seeking documents concerning the hiring process, applications, and interviews involved with the promotion of certain city employees. You claim that the requested information is excepted from required public disclosure under section 552.103(a) of the Government Code. You state the you will release some of the requested information, but that the city wishes to withhold other documents responsive to the request for information. You have submitted the documents responsive to the request for information which the city seeks to withhold.

Section 552.103(a) of the Government Code excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

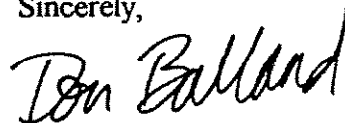
To show that section 552.103(a) is applicable, the city must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston

[1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the department must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

In this instance, you state that the city has received notice that an unsuccessful applicant for promotion has filed a formal employment grievance with the city and the cases is under investigation. You state that the documents relate to a "pending administrative action." We conclude, however, that you have not shown that litigation is reasonably anticipated under these circumstances. See Open Records Decision No. 588 (1991). The documents may not, therefore, be withheld pursuant to section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 39889

Enclosures: Submitted documents

cc: Mr. Emmanuel C. Lewis
4222 Lockefield Apt. No. 902
Houston, Texas 77092
(w/o enclosures)